

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

HOMELAND INSURANCE COMPANY OF  
NEW YORK,

Plaintiff,

v.

CLINICAL PATHOLOGY  
LABORATORIES, INC. SONIC  
HEALTHCARE USA, INC., MEDLAB  
PATHOLOGY, SONIC HEALTHCARE  
(IRELAND) LIMITED, AND SONIC  
HEALTHCARE LIMITED.

Defendants.

CIVIL ACTION NO. 1:20-cv-783

**DECLARATION OF BRIAN R. DAVIS IN SUPPORT OF HOMELAND INSURANCE  
COMPANY OF NEW YORK'S RESPONSE TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, Brian R. Davis, declare as follows:

1. I am a Senior Claims Consultant for Atlantic Specialty Insurance Company. I provide claim adjustment services for Homeland Insurance Company of New York. Atlantic Specialty Insurance Company and Homeland Insurance Company of New York are both indirect wholly owned subsidiaries of Intact Insurance Group USA Holdings, Inc. I am authorized to make this declaration on behalf of Homeland.

2. In my capacity as a Senior Claims Consultant, I am personally familiar with the manner in which Homeland Insurance Company of New York and its affiliated entities that were formerly a part of the OneBeacon Insurance Group (which was purchased by Intact; collectively referred to herein for ease of reference as “Homeland”) prepare and maintain files and records with respect to their underwriting files and insurance claims. As part of its normal business activities, Homeland’s employees and representatives’ practice and procedure is to maintain records and to record acts and events concerning the underwriting of insurance and the investigation and adjustment of a claim at or about the time such events or acts occur. Homeland relies on these records in connection with its underwriting and issuance of insurance policies, as well as its investigation and adjustment of claims submitted to it by insureds. All of the exhibits referred to below are records that are made, kept, and maintained by Homeland in the regularly conducted activity of its business.

**Documents from Defendants’ Underwriting File**

3. I have reviewed the underwriting file for account number 34379, which pertains to medical facilities liability insurance policies issued by Homeland to named insured Sonic Healthcare Investments, GP and related insureds (the “Underwriting File”). In that Underwriting File is a medical facilities and providers professional liability renewal application that was

signed on April 11, 2016, on behalf of Sonic Healthcare Investments GP (the “2016 Application”). Attached hereto as **Exhibit 1** is a true and correct copy of the signature page of that 2016 Application.<sup>1</sup>

4. That Underwriting File also contains an insurance binder, dated June 28, 2016, that Homeland issued to named insured Sonic Healthcare Investments, G.P., for the renewal of a medical facilities liability insurance policy for the policy period of June 30, 2016 to June 30, 2017, policy no. MFL-004062-0616 (the “2016 Binder”). Attached hereto as **Exhibit 2** is a true and correct copy of the 2016 Binder.

5. The Underwriting File further contains a letter dated July 27, 2016, from Clinical Pathology Laboratories (“CPL”) addressed to OneBeacon Insurance Group, signed by Stephen R. Shumpert (the “2016 Letter”). Attached hereto as **Exhibit 3** is a true and correct copy of that 2016 Letter.

6. In the Underwriting File is also an email chain that contains emails dated June 24, 2016 and August 1, 2016, that were exchanged between representatives from Aon Risk Solutions and underwriters at OneBeacon regarding changes the insureds wished to make to the medical facilities liability insurance policies issued to Sonic Healthcare Investments. One of the issues addressed in those emails is a “warranty letter” that Aon provided to OneBeacon. Attached hereto as **Exhibit 4** is a true and correct copy of this email chain which contained the 2016 Letter referred to as the “warranty letter” (**Exhibit 3**) as an attachment.

7. The Underwriting File also contains a copy of the updated medical facilities liability insurance policy, policy no. MFL-004062-0616, for the policy period of June 30, 2016,

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<sup>1</sup> Some of the exhibits referenced herein have certain portions highlighted or annotated, which were not part of the original documents, but I understand to have been included now for ease of reference.

to June 30, 2017 (the “2016 Policy”). Attached hereto as **Exhibit 5** is a true and correct copy of that 2016 Policy.

8. The Underwriting File further contains a copy of the medical facilities liability insurance policy, policy no. MFL-004062-0617, for the policy period of June 30, 2017, to June 30, 2018 (the “2017 Policy”). Attached hereto as **Exhibit 6** is a true and correct copy of that 2017 Policy.

9. The Underwriting File also contains a copy of a May 16, 2018 email from a OneBeacon representative to Aon confirming that Homeland would not be renewing the Sonic policies. Attached hereto as **Exhibit 7** is a true and correct copy of that email.

**Documents from Defendants’ Claim File for the Irish Claims**

10. I have also reviewed the claim file for claim no. 0AB220536, which was opened under the 2017 Policy regarding claims being asserted by Irish women for the alleged misreading of cervical cancer screening slides (the “Claim File”). The Claim File reflects that in May 2018, Sheridan Foster as a representative of Defendants submitted a bulk claim report to Homeland with a list of 101 slides that either were or could be the subject of future claims against CPL. Attached hereto as **Exhibit 8** is a true and correct copy of that 2018 bulk claim report.

a. Exhibit 8 is subject to Homeland’s Unopposed Motion to Seal and so only a slip sheet appears at Exhibit 8.

11. The Claim File also reflects that in December 2018, Homeland was provided with a copy of a March 2016 email chain between representatives at MedLab Pathology and Aon Risk Solutions, as well as an attached incident report that MedLab Pathology submitted to its insurer, Vero, with a list of 58 slides that may have been misread. Attached hereto as **Exhibit 9** is a true and correct copy of that 2016 email chain and bulk claim report to Vero.

- a. Exhibit 9 is subject to Homeland's Unopposed Motion to Seal and so only a slip sheet appears at Exhibit 9.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration is executed on 10/27/2021 in Englewood, Colorado.

DocuSigned by:  
*Brian R. Davis*  
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Brian R. Davis

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of this document was served upon counsel of record for all parties who have made an appearance in this case at the addresses indicated by CM/ECF electronic notification on this 29th day of October 2021. I declare under penalty of perjury that the foregoing is true and correct.

*/s/ Jenna A. Fasone*

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